AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: 2019 Asphalt Paving Bid

Action Requested: Motion

Parties to the Agreement: Gunnison County and Successful Bidder

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Bids will be submitted for the multi-agency project on May 16th. I will not be able to complete packet info until then.

Fiscal Impact:

Submitted by: Marlene D. Crosby **Submitter's Email Address:** mcrosby@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns for this phase. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 5/9/2019

County Attorney Review: (●) Required ( ) Not Required

Comments:
ok db 5/15/19

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 5/15/2019 Certificate of Insurance Required Yes (●) No ( )

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 5/16/2019

( ) Consent Agenda (●) Regular Agenda ( ) Worksession Time Allotted: DCM Report

Agenda Date: 5/21/2019

Revised April 2015

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT is made this ___ day of _____, 20__, by and between _____ (hereinafter referred to as "Contractor"), and the _____, Colorado; (hereinafter the "Owner").

WITNESSETH:

WHEREAS, the Owners desires that Contractor perform the duties of general contractor for the construction of certain improvements, namely the Multi-Agency Paving and Street Rehabilitation Project (hereinafter the "Project"); and

WHEREAS, Contractor desires to perform such duties pursuant to the terms and conditions provided for in this Agreement; and

WHEREAS, the parties hereto desire to set forth certain understandings regarding the Project in writing.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Statement of Work. Contractor agrees to manage and supervise the construction of the Multi-Agency Paving and Street Rehabilitation Project located in Gunnison County, Colorado, as directed by the Owners and pursuant to the individual owners Municipal Codes and according to the bid schedule and attached paving and street rehabilitation specification. Contractor shall (a) furnish all tools, equipment, supplies, superintendence, transportation and other construction accessories, services and facilities; (b) furnish all materials, supplies, and equipment specified to be incorporated into and form a permanent part of the complete work; (c) provide and perform all necessary labor in a substantial and skillful manner and in accordance with the provisions of this Agreement; and (d) execute, construct and complete all work included in and covered by this Agreement.

2. Time of Commencement and Completion. Construction under this Agreement shall be completed by October 11, 2019 (Completion Date"), with the exception of Gunnison County's Fairgrounds and Wildrose shall be completed by July1, 2019. The Completion Date may, at the Owner's sole discretion, be extended if approved by the Owner in writing. If, due to misconduct or neglect, Contractor fails to complete the Project on or before the Completion Date, the Owner may deduct liquidated damages in the amount of $500.00 from the contract price per day for each day Contractor works beyond this date. It is understood by Contractor and the Owner that actual damages caused by Contractor's failure to complete this Agreement on time are impracticable or extremely difficult to fix, and that the per diem deduction from the contract price will be retained by the Owner as payment by Contractor of liquidated damages, and not as a penalty.

3. Compensation. Owner shall pay and Contractor shall receive the contract price of **$_____** as stipulated in the Notice of Award, attached to this contract as Exhibit B and incorporated herein by this reference, as FULL compensation for everything furnished and done by Contractor under this Agreement, including all loss or damage arising out of the work or from the action of the elements; for any unforeseen obstruction or difficulty encountered in the prosecution of the work, including increased prices for or shortages of materials for any reason, including natural disasters; for all risks of every description associated with the work; for all expenses incurred due to the suspension or discontinuation of the work; and for well and faithfully completing the work as provided in this Agreement.

4. Draw Requests. Contractor agrees to perform all work on the Project according to the schedules set forth in the approved Bid Proposal attached hereto as Exhibit B and incorporated herein by this reference. Contractor shall submit weekly progress reports to the Owners, Maintenance Supervisor or his designee showing actual costs incurred and work completed. Upon review and approval of the progress reports and draw requests by the Maintenance Supervisor or his designee, the Owner agrees to pay Contractor the amounts shown on all draw requests, minus a ten percent (10%) retainage, no later than the fifteenth (15th) business day following the date the draw request was submitted and approved. Payments may be withheld if:

A. Work is found defective and not remedied;

B. Contractor fails to meet schedules as agreed to, as may be amended by the actual construction commencement date.

C. Contractor does not make prompt and proper payments to subcontractors;

D. Contractor does not make prompt and proper payments for labor, materials, or equipment furnished;

E. Another contractor is damaged by an act for which Contractor is responsible;

F. Claims or liens are filed on the job; or

G. In the opinion of the Owner, Contractor's work is not progressing satisfactorily.

The Owner shall disburse the total retainage and the final draw request submitted by Contractor upon acceptance of the Project as described in Paragraph 12 below.

5. Liability for Damages. The Owner its officers, agents or employees, shall not in any manner be answerable or responsible for any loss or damage to the work or to any part of the work; for any loss or damage to any materials, building, equipment or other property that may be used or employed in the work, or placed on the worksite during the progress of the work; for any injury done or damages or compensation required to be paid under any present or future law, to

any person, whether an employee of Contractor or otherwise; or for any damage to any property occurring during or resulting from the work. Contractor shall indemnify the Owner, its officers, agents and employees, against all such injuries, damages and compensation arising or resulting from causes other than the Owner's neglect, or that of its officers, agents or employees.

6. Inspection of Work and Materials.

A. The Owner or his designee may appoint and employ such persons as may be necessary to act as inspectors or agents for the purpose of supervising in the interests of the Owner materials furnished, and work done as the work progresses.

B. The Owner shall at all times have unrestricted access to all parts of the work and to other places where or in which the preparation of materials and other integral parts of the work are being carried on and conducted. Contractor shall fully cooperate with the Owner's staff and appointed inspectors during the course of the work.

C. Contractor shall provide all facilities and assistance required or requested to carry out the work of supervision and inspection by the Owner, including soil, concrete, hot mix asphalt and other material tests.

D. Inspection of the work by the above-mentioned authorities or their representatives shall in no manner be presumed to relieve in any degree the responsibility or obligations of Contractor.

E. No material of any kind shall be used in the work until it has been inspected and accepted by the Owner. All rejected materials shall be immediately removed from the premises. Any materials or workmanship found at any time to be defective shall be replaced or remedied at once regardless of previous inspection. Inspection of materials shall be promptly made, and, where practicable, at the source of supply.

F. Whenever the specifications, the instructions of the Owner or the laws, ordinances or regulations of any public authority require work to be specially tested or approved, Contractor shall give the Owner timely notice of its readiness for inspection, and if the inspection is by another authority, of the date fixed for the inspection.

7. Insurance. Contractor shall not commence work under this Agreement until Contractor has obtained all insurance required under this section and the insurance has been approved by the Owner Manager or his designee. Similarly, Contractor shall not allow any approved subcontractor to commence work on his or her subcontract until all similar insurance required of subcontractor has been so obtained and approved. The following insurance shall be required:

A. Commercial General Liability Insurance: At a minimum, combined single limits of $1,000,000 per occurrence and $1,000,000 for general aggregate for bodily injury and property damage, which coverage shall include products/completed operations, independent contractors, and contractual liability each at $1,000,000 per occurrence.

B. Workers' Compensation and Employer's Liability: Workers' compensation insurance for all of Contractor's employees engaged in work at the site of the project including occupational disease coverage in accordance with scope and limits as required by the State of Colorado.

C. Comprehensive Automobile Liability Insurance: Including coverage for all owned, non-owned, and rented vehicles with $1,000,000 combined single limit for each occurrence.

The Owner shall be named as an additional insured. All insurance policies must be written in a manner consistent with the requirements of the Standard Form Agreement. Certificates of insurance shall be issued prior to execution of the Notice to Proceed.

8. Performance Bond. To secure performance of Contractor's obligations under this Agreement, the Contractor shall provide the Owner with a Performance Bond in the amount of the full contract price. Prior to execution of this Agreement, the Contractor shall provide the form of the Performance Bond to the Owner for its review and approval. The Owner shall be authorized to draw upon the Performance Bond to correct any default by Contractor under this Agreement, which default shall be determined and substantiated by an Affidavit of Default signed by the Owner Manager. The Performance Bond shall be held by the Owner through the one-year warranty period specified in Paragraph 13 below.

9. Payment of Labor and Materials Bond. To secure performance of Contractor's obligations under this Agreement to its subcontractors and suppliers, Contractor shall provide the Owner with a Payment of Labor and Materials Bond in the amount of the full contract price. Prior to execution of this Agreement, the Contractor shall provide the form of the Payment of Labor and Materials Bond to the Owner for its review and approval. The Owner shall be authorized to draw upon the Payment of Labor and Materials Bond to correct any default by Contractor under this Agreement, which default shall be determined and substantiated by an Affidavit of Default signed by the Owner Manager. The Payment of Labor and Materials Bond shall be held by the Owner through the one-year warranty period specified in Paragraph 13 below.

10. Notice to Proceed. Notice to Proceed shall be issued within ten (10) calendar days of the execution of this Agreement by all parties. If the Owner fails to issue such Notice to Proceed within that time limit, Contractor may terminate the Agreement without further liability on the part of either party. Such notice of termination must be tendered in writing to the Owner.

Additionally, the parties may mutually agree that the time for the Notice to Proceed may be extended.

11. Compliance with Laws. Contractor and every subcontractor or person doing or contracting to do any work contemplated by this contract shall keep himself or herself fully informed of all national and state laws and all municipal ordinances and regulations in any manner affecting the work or performance of his or her contract or any extra work, and shall at all times observe and comply with such laws, ordinances and regulations, whether or not the laws, ordinances or regulations are mentioned in this contract, and shall indemnify the Owner, its officers, agents and employees, against any claim or liability arising from or based on the violation of any such laws, ordinances or regulations.

12. Certificates and Permits. Contractor shall secure at Contractor 's own expense all necessary certificates, licenses and permits from municipal or other public authorities required in connection with the work contemplated by this Agreement or any part of this Agreement, and shall give all notices required by law, ordinance or regulation. Contractor shall pay all fees and charges incident to the due and lawful prosecution of the work contemplated by this Agreement, and any extra work performed by Contractor.

13. Termination. The Owner may, at its sole discretion, terminate this Agreement without liability in the event that Contractor fails to provide the Performance Bond and/or Payment of Labor and Materials Bond, Certificates of Insurance required by Paragraph 7, or otherwise fails to meet the conditions precedent to issuance of the Notice to Proceed set forth in Paragraph 10 above. The Owner may also, at its sole discretion, on one week's notice to Contractor, terminate this Agreement without liability before the completion date, and without prejudice to any other remedy the Owner may have, when Contractor defaults in the performance of any provision, or fails to carry out the construction of the Project in accordance with the provisions of this Agreement.

14. Substantial Completion/Acceptance. The date of substantial completion of the Project shall be a date mutually agreed upon by the Owner and Contractor. In the event that the Owner and Contractor do not reach an agreement as to the date of substantial completion, the Owner Council shall determine such date. Upon the date of substantial completion, Contractor or its engineer shall certify in writing that the improvements have been completed in conformance with the plans and specifications and submit to the Owner a completed acceptance checklist utilizing a form approved by the Owner. Thereafter, and within thirty (30) business days after a request for final inspection by Contractor, the Owner shall inspect the Project and notify Contractor in writing and with specificity of their conformity or lack thereof to the plans and specifications. Contractor shall make all corrections necessary to bring the Project into conformity with the plans and specifications. Once any and all corrections are completed, the Owner shall promptly notify Contractor in writing that the Project is in conformance with the approved plans and specifications, and the date of such notification shall be known as the Acceptance Date. The Acceptance Date shall coincide with the commencement of the one-year warranty period described in Paragraph 15 below. Within thirty (30) days of the Acceptance Date, the Owner shall pay Contractor the amount shown on the final draw request; provided,

however, that the amount of funds left from the contract price specified in the Notice of Award are sufficient to cover this amount.

15. Warranty. Contractor shall warrant any and all improvements constituting the Project constructed for the Owner pursuant to this Construction Agreement for a period of twelve (12) months from the Acceptance Date as set forth in Paragraph 14 herein. Specifically, but not by way of limitation, Contractor shall warrant that:

A. Any and all improvements constituting the Project shall be free from any security interest or other lien or encumbrance; and

B. Any and all improvements and structures so conveyed shall be free of any defects in materials or workmanship for a period of one (1) year, as stated above. Additionally, the culvert backfill, road base and paving shall be warranted for a period of 2 years from the time of completion.

16. Corrections to Project. If, within one (1) year after the date of substantial completion, any of Contractor's work on the Project is found to be not in accordance with the standards set forth in the preceding Paragraph 15, Contractor shall, at Contractor's expense, correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously accepted such condition. Such notice shall be either delivered personally or be overnight express courier, or sent by registered or certified mail, postage prepaid, return receipt requested, and must be received by Contractor as soon as practicable after the Owner discovers the defect or the loss or damage caused by such defect, but in no event later than the date that the warranty given hereby expires.

17. Modifications. The Owner may modify this Agreement with respect to the arrangement, character, alignment, grade or size of the work or appurtenances whenever in its opinion it shall deem it necessary or advisable to do so. Contractor shall accept such modifications when ordered in writing by the Owner Manager or his designee. Any such modifications shall not subject Contractor to increased expense without equitable compensation, which compensation may be approved by the Owner pursuant to its Purchasing Policy. If any modification results in a decrease in the cost of work involved, an equitable deduction from the contract price shall be made. These deductions shall be determined by the Owner Manager or his designee. The determination of any such additional compensation or deduction shall be based on the bids submitted and accepted. No modifications in the work shown on the plans and described in the specifications shall be made, unless the nature and extent of the modifications has first been certified by the Owner in writing and sent to Contractor.

18. Attorneys' Fees; Survival; Costs of Collection. Should this Agreement become the subject of legal action to resolve a claim of default in performance by any party, including the collection of past due amounts, the non-prevailing party shall pay the prevailing party's reasonable attorneys' fees, expenses, and court costs. All rights concerning remedies and/or attorneys' fees shall survive any termination of this Agreement.

19. Governing Law. The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement.

20. Assignment. This Agreement may not be assigned without the prior written consent of the non-assigning party.

21. Amendment. This Agreement shall not be amended, except by subsequent written agreement of the parties.

22. Entire Agreement. This Agreement, **along with any addendums and attachments hereto**, constitutes the entire agreement between the parties. The provisions of this Agreement may be amended at any time by the mutual consent of both parties. The parties shall not be bound by any other agreements, either written or oral, except as set forth in this Agreement.

23. Captions. The captions in this Agreement are inserted only for the purpose of convenient reference and in no way define, limit, or prescribe the scope or intent of this Agreement or any part thereof.

24. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

25. Invalid Provision. If any provisions of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, all of which other provisions shall remain in full force and effect. It is the intention of the parties hereto that, if any provision of this Agreement is capable of two constructions, one of which would render the provision void, and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

26. Notices. Written notices required under this Agreement and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

If to the Owners:

David Gardner, P.E. – Public Works Director – City of Gunnison
Marlene Crosby – Public Works Director – Gunnison County
Joe Fitzpatrick – Town Manager – Town of Mt. Crested Butte
Shea Earley – Public Works Director – Town of Crested Butte
Ronnie Bensen -- Crested Butte South Metro District

If to Contractor: _____ –

27. Authority. Each person signing this Agreement represents and warrants that he is

fully authorized to enter into and execute this Agreement, and to bind the party it represents to the terms and conditions hereof.

28. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall be deemed one and the same instrument.

29. Contractor's Employee Requirements By its signature on this Agreement, Contractor certifies that, as of the time of its signature, it does not knowingly employ or contract with an illegal alien and that, in order to confirm the employment eligibility of all employees who are newly hired for employment in the United States, the Contractor has participated or attempted to participate in the E-Verify program ("E-Verify Program") created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, administered by the United States Department of Homeland Security, and the Social Security Administration or the Department Program (Department Program) established pursuant to §8-17.5-102(5)(c), C.R.S.

Contractor agrees that it shall not knowingly employ or contract with an illegal alien to perform work under this Agreement; and that it shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.

Contractor has confirmed or attempted to confirm through participation in the E-Verify or Department Program the employment eligibility of all employees who are newly hired for employment in the United States. Contractor shall not use E-Verify or Department Program procedures to undertake pre-employment screening of job applicants while work under this Agreement is being performed.

If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall: (1) notify the subcontractor and the Owner within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and (2) terminate the subcontract with the subcontractor if, within three days of receiving the notice required herein, the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

The Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. Section 8-17.5-101(5).

If Contractor violates a provision of this Illegal Alien Addendum, the Owner may terminate this Agreement for breach of contract. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the Owner. Contractor understands that, in the

event of such a termination, Owner is required to notify the office of the Colorado Secretary of State.16. Counterparts. The parties hereto may execute any number of counterparts to this Agreement, each of which shall be deemed to be an original, and all of which together shall constitute one and the same agreement.

WHEREFORE, the parties hereto have executed duplicate originals of this Construction Agreement on the day and year first written above.

[CONTRACTOR]:

By _____

Name _____

Title _____

ATTEST:

_____
Name

Representing: _____, COLORADO:

By _____
Owner/Manager

ATTEST:

_____
Owner Clerk